

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT WILLIAMS,

04-CV-0082E(Sc)

Petitioner,

ORDER

-vs-

MCGINNIS, Superintendent,
Respondent.

The Honorable Hugh B. Scott, a Magistrate Judge in this judicial district, having conducted all proceedings necessary pursuant to this Court's referral under 28 U.S.C. §636(b)(1)(B) and having on October 26, 2005 filed his Report and Recommendation concerning such (Docket No. 6) and no objection thereto having been made,

IT IS HEREBY ORDERED that Magistrate Judge Scott's Report and Recommendation is confirmed in its entirety and the Petition for a writ of habeas corpus is denied and this case shall be closed.

FURTHER, because the issues raised here are not the type of issues that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, the Court concludes that petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly the Court denies a certificate of appealability;¹

¹Following the issuance of Magistrate Judge Scott's Report and Recommendation, petitioner filed a notice of appeal to the United States Court of Appeals for the Second Circuit. (Docket No. 7, Notice of Interlocutory Appeal). On November 18, 2005, the Court of Appeals dismissed the appeal without prejudice to it being reinstated within 30 days from the entry of an order by the district judge granting or denying a certificate of appealability. Petitioner was directed to "promptly" move for a certificate of appealability in the

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FURTHER, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this judgment would not be taken in good faith and therefore denies leave to appeal as a poor person. *Coppedge v. United States*, 369 U.S. 438 (1962).

DATED: Buffalo, N.Y.

March 8, 2006

/s/ John T. Elfvin

JOHN T. ELFVIN
S.U.S.D.J.

¹(...continued)
district court, which he has not done. (Docket No. 8, Mandate of United States Court of Appeals, entered December 13, 2005).